

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Benchmark Insurance Company,

Case No. 20-cv-908 (JRT/TNL)

Plaintiff,

v.

ORDER

Sunz Insurance Company, et al.,

Defendants.

X. Kevin Zhao, Lawrence M. Shapiro, Mark L. Johnson, and Anna M. Tobin, Greene Espel PLLP, 222 South Ninth Street, Suite 2200, Minneapolis, MN 55402 (for Plaintiff); and

Anne M. Lockner, Robins Kaplan LLP, 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, MN 55402 and Jason S. Oletsky and Christopher S. Carver, 350 East Las Olas Boulevard, Suite 1600, Fort Lauderdale, FL 33301 (for Defendant SUNZ Insurance Company and SUNZ Insurance Solutions LLC).

This matter is before the Court on SUNZ Insurance Company's Motion to Compel Deposit of Interpleader Funds. (ECF No. 19). For the reasons set forth below, the Court will deny the motion as moot.

I. BACKGROUND

Plaintiff Benchmark Insurance Company has filed an interpleader action under 28 U.S.C. §§ 1335 and 2361. (ECF No. 1). Plaintiff alleges that it is holding \$20,533,594 in excess collateral that it intends to deposit with the Court. (ECF No. 1, p. 2). On April 20, 2020, Defendant SUNZ Insurance Company moved for an order compelling deposit of the excess collateral. The parties also dispute the amount of the excess collateral that Plaintiff

is required to deposit and whether Plaintiff can use certain trust assets to deposit the interpleader funds.

On May 8, 2020, Plaintiff filed a motion seeking permission to deposit the interpleader funds. (ECF No. 44). Plaintiff also asks that, upon deposit of the interpleader funds, the Court dismiss Plaintiff from the action, discharge it from liability and enjoin Defendant-claimants from prosecuting any proceedings with respect to the interpleader funds.

II. ANALYSIS

In an interpleader action brought under 28 U.S.C. § 1335, the plaintiff must deposit the money at issue into the registry of the Court. 28 U.S.C. § 1335(a)(2). If the plaintiff does not do so, the Court lacks subject matter jurisdiction to hear the case. *Acuity v. Rex, LLC*, 929 F.3d 995, 1000 (8th Cir. 2019). The District's Local Rules require a party seeking to deposit funds into the registry of the Court to file a motion for leave to make the deposit, a completed Registry Deposit Information form, and a proposed order. D. Minn. LR 67.1.

Because Plaintiff has now filed the required motion for permission to deposit the interpleader funds, the Court will deny SUNZ Insurance Company's motion to compel as moot. Briefing shall occur on Plaintiff's motion pursuant to Local Rule 67.1.¹ A hearing will be scheduled following the completion of briefing should the Court deem it appropriate.

¹ In denying SUNZ's motion as moot, the Court is making no ruling or taking a position on the merits of the arguments that SUNZ raised in its reply brief. SUNZ may reassert those arguments in response to Plaintiff's motion should SUNZ deem it appropriate.

III. CONCLUSION

Therefore, based upon the record, memoranda, and proceedings herein, **IT IS HEREBY ORDERED** as follows:

1. SUNZ Insurance Company's Motion to Compel Deposit of Interpleader Funds (ECF No. 19) is **DENIED AS MOOT**.

2. Briefing on Plaintiff Benchmark Insurance Company's Motion for Leave to Deposit Interpleader Funds and Discharge (ECF No. 44) shall occur pursuant to D. Minn. LR 67.1.

3. All prior consistent orders remain in full force and effect.

4. Failure to comply with any provision of this Order or any other prior consistent order shall subject the non-complying party, non-complying counsel and/or the party such counsel represents to any and all appropriate remedies, sanctions and the like, including without limitation: assessment of costs, fines and attorneys' fees and disbursements; waiver of rights to object; exclusion or limitation of witnesses, testimony, exhibits, and other evidence; striking of pleadings; complete or partial dismissal with prejudice; entry of whole or partial default judgment; and/or any other relief that this Court may from time to time deem appropriate.

Date: May 11, 2020

s/ Tony N. Leung
Tony N. Leung
United States Magistrate Judge
District of Minnesota

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